Tan Sri Dato' Sri Khalid bin Abu Bakar (DIG) Pengerusi Lembaga Tatatertib Polis Diraja Malaysia & Ors v Muhammad Farid bin Muntalib

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)-241–07 OF 2014
MAH WENG KWAI, ROHANA YUSUF AND TENGKU MAIMUN JJCA
20 JANUARY 2015

Criminal Law — Corruption — Corruptly receiving gratification — Respondent dismissed from Royal Malaysian Police Force after being found guilty of two charges by disciplinary board — Offence of requesting for gratification monies for purpose of settling arrest case in relation to driving and having in possession stolen car — Whether there was stolen car — Application for judicial review of disciplinary board decision — Respondent adduced documents of confirmation record of whether car was stolen and/or reported to be stolen and road tax of said car — Whether documents relevant to judicial review

The respondent was dismissed from the Royal Malaysian Police Force after the disciplinary board ('the DB') found him guilty of two charges of, namely, requesting for gratification monies in the amount of RM5,000 from one Nursaifullah for the purpose of settling an arrest case against the latter in relation to driving and having in possession a stolen car; and for failing to make a police report on Nursaifullah for driving and having in possession a stolen car. In denying the charges and arguing that they were baseless, the respondent stated that he had checked with the police internal database which confirmed that there was no report on the stolen car. The respondent filed an application for judicial review in the High Court seeking for declaration and/or certiorari to quash the decision of the DB. The respondent submitted that he could not have committed the alleged misconduct as the car was not reported stolen. After leave was granted by the High Court for the judicial review application, the respondent filed an application for the discovery of the following documents: (i) confirmation record of whether the car was stolen and/or reported to be stolen; (ii) road tax of the registration number of the car which was said to be forged; and (iii) all the witnesses' statement. The High Court judge allowed the application. Hence, the present appeal. The appellants submitted that the documents were not relevant to the judicial review proceedings. The issue before the court was whether the respondent has satisfied that the documents sought for were relevant to the judicial review proceedings.

Held, allowing the appeal with costs in cause:

(1) The disciplinary charges against the respondent were for soliciting the bribe money and for not making a report on the arrest of the complainant. The fact that the vehicle was a stolen vehicle was not the foundation of the charges. It was raised as a defence by the respondent. The respondent contended that he could not have committed the offence of soliciting the bribe when the vehicle was not reported stolen in the first place. Whether or not the vehicle was a stolen vehicle would not affect the charges or the defence as it was not the respondent's case that he did not arrest the complainant on the ground the vehicle was not a stolen vehicle or that he did in fact make a report on the arrest of the complainant (see paras 14–15).

(2) The respondent's position all along was that the vehicle was never reported stolen. He wanted the documents to confirm that the vehicle was not stolen. The court do not find any dispute on this fact. The appellants did not at any time aver that the vehicle was in fact stolen (see para 15).

(3) The respondent did not request for the documents in the proceedings before the DB. The request was made after the DB had made its decision. There was thus no issue that the documents were crucial and necessary for the purpose of preparing the defence and representation. At the hearing before the DB, the respondent had put up his representation and he had alluded to the fact that he had made enquires where he was informed that there was no report of the said vehicle being stolen. The appellants could not be said to have breached the procedural fairness requirement (see para 16).

(4) The judicial review application was not concerned with the correctness of a decision but rather with the manner the decision was made. Hence, the categories of documents which a court could consider were necessary to be discovered would be much more confined than if the litigation was related to the merits of the case (see para 17).

(5) The respondent failed to show the relevance of the documents for the purpose of the judicial review application. As mentioned before, he was given the opportunity to answer the charges and he was able to make his representation on the charges. Indeed it was not the contention of the respondent that he was not able to properly prepare his representation or his defence to the charges (see para 20).

[Bahasa Malaysia summary

Responden dipecat daripada Polis Diraja Malaysia selepas lembaga tatatertib ('LT') mendapati dia bersalah atas dua pertuduhan, iaitu, meminta wang suapan dalam jumlah RM5,000 daripada seorang Nursaifullah bagi tujuan penyelesaian kes tangkap terhadap yang kedua berkaitan memandu dan mempunyai milikan kereta curi; dan untuk kegagalan untuk membuat laporan

polis terhadap Nursaifullah kerana memandu dan mempunyai milikan kereta curi. Dalam menafikan pertuduhan-pertuduhan dan berhujah bahawa dakwaan-dakwaan tidak berasas, responden menyatakan bahawa dia telah memeriksa dengan pangkalan data dalaman polis yang mengesahkan bahawa tiada laporan terhadap kereta curi itu. Responden memfailkan permohonan semakan kehakiman di Mahkamah Tinggi memohon deklarasi dan/atau certiorari untuk membatalkan keputusan LT. Responden mengemukakan bahawa dia tidak mungkin boleh melakukan salah laku yang dikatakan kerana kereta tersebut tidak dilaporkan dicuri. Setelah permohonan dibenarkan oleh Mahkamah Tinggi untuk permohonan semakan kehakiman, responden memfailkan permohonan untuk penemuan dokumen-dokumen berikut: (i) rekod pengesahan sama ada kereta telah dicuri dan/atau dilaporkan dicuri; (ii) cukai jalan bagi nombor pendaftaran kereta yang dikatakan palsu; dan (iii) semua kenyataan saksi-saksi. Hakim Mahkamah Tinggi membenarkan permohonan. Maka, rayuan ini. Perayu mengemukakan bahawa dokumen-dokumen tersebut tidak relevan kepada prosiding semakan kehakiman. Isu di hadapan mahkamah adalah sama ada responden telah memenuhi keperluan bahawa dokumen-dokumen dipohon adalah relevan untuk semakan kehakiman.

Diputuskan, membenarkan rayuan dengan kos dalam kausa:

(1) Pertuduhan tatatertib terhadap responden adalah untuk mengambil wang dan rasuah untuk tidak membuat laporan mengenai penangkapan pengadu. Fakta bahawa kenderaan adalah kenderaan curi bukanlah asas terhadap dakwaan. Ia dibangkitkan sebagai pembelaan oleh responden. Responden berhujah bahawa dia tidak mungkin dapat melakukan kesalahan mengambil rasuah apabila kenderaan tidak dilaporkan dicuri pada awalnya. Sama ada atau tidak kenderaan adalah kenderaan curi tidak akan memberi kesan kepada pertuduhan atau terhadap pembelaan kerana ia bukanlah kes responden bahawa dia tidak menangkap pengadu atas alasan kenderaan bukanlah kenderaan curi atau bahawa dia telah membuat laporan tangkap terhadap pengadu (lihat perenggan 14–15).

(2) Kedudukan responden selama ini adalah bahawa kenderaan tidak pernah dilaporkan dicuri. Dia meminta dokumen-dokumen tersebut untuk mengesahkan bahawa kenderaan tidak dicuri. Mahkamah tidak menjumpai apa-apa pertikaian terhadap fakta. Perayu-perayu tidak pada bila-bila masa menyatakan bahawa kenderaan itu dicuri (lihat perenggan 15).

(3) Responden tidak memohon untuk dokumen-dokumen tersebut dalam prosiding di hadapan LT. Permintaan dibuat selepas LT membuat keputusannya. oleh itu tiada isu bahawa dokumen-dokumen tersebut adalah penting dan perlu bagi tujuan menyiapkan pembelaan dan bantahan. Pada perbicaraan di hadapan LT, responden telah

mengemukakan bantahannya dan dia telah merujuk kepada fakta bahawa dia telah membuat siasatan yang mana dia telah dimaklumkan bahawa tiada laporan kereta tersebut dicuri. Perayu tidak boleh dikatakan telah melanggar kehendak keadilan tatacara (lihat perenggan 16).

(4) Semakan kehakiman tidak berkaitan dengan ketepatan keputusan tetapi dengan cara keputusan dibuat. Oleh itu, kategori dokumen yang mana mahkamah boleh mempertimbangkan ini perlu ditemui akan lebih terbatas daripada tindakan undang-undang jika itu berkaitan dengan merit kes itu (lihat perenggan 17).

(5) Responden gagal untuk menunjukkan perkaitan dokumen itu untuk tujuan permohonan semakan kehakiman. Seperti yang disebut sebelumnya, dia telah diberi peluang untuk menjawab pertuduhan dan dia mampu untuk membuat bantahannya terhadap pertuduhan. Sesungguhnya ia bukanlah hujah responden bahawa dia tidak mampu untuk secara wajar menyediakan bantahannya atau pembelaannya terhadap pertuduhan (lihat perenggan 20).]

Notes

For cases on corruptly receiving gratification, see 4(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 151–171.

Cases referred to

Carlow Kilkenny Radio Ltd v Broadcasting Commission of Ireland [2003] 3 IR 528, SC (refd)

Ranhill Worley Sdn Bhd (formerly known as Jacobs Construction Management (M) Sdn Bhd) v Franz Jozef Marie Schefman & Anor [2008] 6 MLJ 823, HC (distd)

Rekapacific Bhd v Securities Commission & Anor and other appeals [2005] 2 MLJ 269, CA (refd)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487, HC (refd)

Yekambaran s/o Marimuthu v Malayawata Steel Bhd [1993] MLJU 96, HC (folld)

Legislation referred to

Rules of Court 2012 O 24 rr 3, 7, O 53

Appeal from: Application for Judicial Review No R2-25–73–04 of 2013 (High Court, Kuala Lumpur)

Khairul Fazly bin Kamarudin (Senior Federal Counsel, Attorney General's Chambers) for the appellants.

Ebrina bt Zubir (Maniam Nair & Co) for the respondent.

Tengku Maimun JCA (delivering judgment of the court):

[1] The respondent was dismissed from the Royal Malaysian Police Force after the disciplinary board found him guilty of two charges. The first charge reads:

> Bahawa anda ... telah meminta wang suapan sebanyak RM5,000.00 daripada En. Mohd Nursaifullah bin Hashim (KP: 780307-02-6249) bagi tujuan selesaikan kes tangkapan terhadapnya kerana dikatakan memandu dan memiliki kenderaan curi iaitu sebuah kereta Mercedes Benz no. pendaftaran WHM 8123 dan selepas perbincangan anda bersetuju untuk menerima wang suapan sebanyak RM4,000.00 sebagai ganjaran untuk membebaskannya ...

And the second charge reads:

> ... Bahawa anda ... telah gagal untuk membuat laporan polis ke atas tangkapan En. Mohd Nursaifullah bin Hashim (KP: 780307-02-6249) kerana dikatakan memandu dan memiliki kenderaan curi iaitu sebuah kereta Mercedes Benz no. pendaftaran WHM 8123.

[2] The respondent in his representation letter denied both charges. He stated, inter alia, that he had checked with the police internal database which confirmed that there was no report that the Mercedes Benz WHM 8123 ('the vehicle') was stolen. The respondent contended that the disciplinary charges against him were baseless.

[3] The respondent filed an application for judicial review in the High Court at Kuala Lumpur seeking for declaration and/or certiorari to quash the decision of the disciplinary board. In his affidavit in support of the application for judicial review, the respondent averred that he could not have committed the alleged misconduct as explained in his representation letter as the vehicle was not reported stolen.

[4] After leave was granted by the High Court for the judicial review application, the respondent filed an application for the discovery of the following documents:

i Pengesahan rekod sama ada kenderaan Mercedez Benz No. WHM 8123 pernah dan/atau telah dilaporkan curi/hilang sebelum atau pada 27/5/2009;

ii cukai jalan kenderaan No. WHM 8123 yang dikatakan palsu;

iii kesemua statement saksi, pengadu (A1) serta statement A2 dan A3 dan subjek (B1 hingga B8) yang dirujuk di dalam 'Eksibit KAB-2', 'Eksibit KAB-7' dan 'Eksibit KAB-8' kepada Afidavit Jawapan Responden-Responden yang diikrarkan pada 1.8.2012.

[5] The application is supported by the following broad grounds (*rekod rayuan Jld* 1 *Bhg* A & B: pp 31–33): **A**

a) Pihak Pemohon memerlukan dokumen dan/atau maklumat tersebut di perenggan a(i) Notis Permohonan dikemukakan dan dibekalkan sesalinan kepada Pemohon untuk menyokong kes/pembelaan Pemohon sebagaimana yang telah dinyatakan dalam surat representasi Pemohon bertarikh 4.4.2012 semasa tindakan tatatertib. **B**

b) Permohonan mendapatkan dokumen dan/atau maklumat di perenggan a(i) Notis Permohonan telah pun dibuat oleh pihak Pemohon kepada Bahagian Risikan/Operasi/Rekod D4, Jabatan Siasatan Jenayah melalui surat bertarikh 18/3/2013, surat peringatan Pertama bertarikh 30/4/2013 dan surat peringatan kedua bertarikh 15/7/2013 namun kami dimaklumkan oleh pihak mereka melalui surat bertarikh 26/7/2013 bahawa pihak Ibu Pejabat Polis DiRaja Malaysia tidak mempunyai peruntukan undang-undang untuk membekalkan dokumen atau maklumat yang dipohon dan bahawa maklumat yang tersimpan adalah rahsia dan tidak boleh didedahkan kepada mana-mana pihak yang tidak berkenaan dan kami diarah untuk memohon kepada mahkamah untuk satu arahan. Sedangkan dalam masa yang sama pihak kami telah dimaklumkan secara lisan bahawa sememangnya tiada rekod bahawa kenderaan tersebut pernah dilaporkan curi/hilang sebelum atau pada 27/5/2009; **C** **D** **E**

c) Kesemua dokumen dan/atau maklumat yang dipohon adalah sangat mustahak untuk Pemohon periksa kerana dokumen atau maklumat tersebut adalah menjadi *asas* kepada Pertuduhan tatatertib terhadap Pemohon; **F**

d) Kesemua dokumen dan/atau maklumat yang dipohon menjadi teras kepada Pembelaan Pemohon.

e) Kesemua dokumen di perenggan a(ii) dan a(iii) dalam Notis Permohonan telah diambilkira oleh Responden-Responden semasa dalam proses membuat keputusan 'decision making process'. Dalam kata lain pihak Responden-Responden bergantung kepada dokumen-dokumen tersebut dalam membuat keputusan sebagaimana di dalam perenggan 7, 12, 13 dan 18.6 Afidavit Jawapan Responden-responden yang diikrarkan pada 1/8/2013. **G**

f) Kesemua dokumen dan/atau maklumat yang dipohon adalah relevan dan mustahak kerana ia dapat membantu Mahkamah Yang Mulia ini membuat keputusan untuk meneliti terperinci sama ada proses membuat keputusan dalam tindakan tatatertib *the decision making process* terhadap Pemohon telah dibuat dengan mengikut undang-undang dan secara adil dan teratur atau tidak. **H** **I**

g) Kesemua dokumen dan/atau maklumat yang disenaraikan adalah wajar dizahirkan dan dikemukakan/dibekalkan kepada Pemohon sesalinan kerana ianya relevan dan dapat *membantu penyelesaian kes secara adil dan saksama.*

h) Pihak Responden-Responden tidak diprejudis dengan permohonan ini.

[6] The application was allowed by the learned High Court judge. Her Ladyship having considered O 53 of the Rules of Court 2012 ('the ROC 2012'), stated:

[7] Saya juga merujuk kandungan buku 'Disciplinary Proceedings Against Public Officers in Malaysia' oleh Dr Gan Ching Chuan, the Associate Professor di Fakulti Undang-Undang, Universiti Malaya, yang menyatakan seperti berikut:

> So far as adducing evidence is concerned, the officer charged with a disciplinary offence is entitled to defend himself adequately. This right is part of the rights to be heard ... The right to be heard includes this right, usually an implied one because the procedure prescribed by written law is silent thereon, to pre-hearing discovery of documents or evidence in the possession of the appropriate Disciplinary Authority and which will be used against the affected officer. Such a right may be demanded on the ground that a person is generally entitled to notice of evidence prejudicial to him as well as that will assist him in the preparation of defense a matter of natural justice or procedural fairness, and the (sic) of this right is tantamount to denying him of his right to make representation under Regulation 37. The *Rohana* case lays down the aforesaid proposition ...
>
> It needs to be emphasized that, as general rule, the right concerned is claimable as a matter of procedural fairness, not at the discretion of the disciplinary authority ... It also needs to be emphasized that the claim of privilege or immunity from disclosure on the part of the Government is mostly likely to fail because the law confers on the Government a very limited scope of privilege or immunity from disclosure ...

[8] Di dalam kes *Ranhill Worley Sdn Bhd v Franz 11 Josef Marie Schefman & Anor* [2008] 6 MLJ 823; [2009] 8 CLJ 364 mahkamah memutuskan bahawa:

> [7] In support of their contention that the lack of opportunity for the applicant to present their case through Curtis Landry was a breach of natural justice, the applicant relied principally on *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487; [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390 and the following passages from the report referred to were:
>
> (i) It is a well established principle of administrative law that anything that restricts, or appears to restrict, the defendant's ability to present his case may be held to be a breach of procedural fairness and, thereby, susceptible to judicial review: for example, a defendant is generally entitled to notice of evidence that might assist his case. It is, therefore, a breach of natural justice for the prosecution to conceal such evidence: *R v Leyland Justice, ex p Hawthorn* (p 493 (left) B–C):
>
> (ii) ...
>
> (iii) ...

[8] The court agrees wholly with the principles propounded in the case of *Rohana bte Ariffin*. The point is whether on the factual matrix of this instant case, there has been any breach of procedural fairness in the manner contended by the applicant.

[9] Berdasarkan autoriti-autoriti di atas, saya berpendapat bahawa adalah penting bagi pemohon dibekalkan dengan keterangan-keterangan yang dijadikan pergantungan oleh responden-responden dalam mengenakan hukuman buang kerja kepada pemohon. Adalah tidak logik dan munasabah bagi mengharapkan pemohon yang tidak mempunyai pengetahuan undang-undang untuk memohon sendiri kepada responden-responden untuk dibekalkan dengan dokumen-dokumen yang 'incriminate' beliau, lebih-lebih lagi apabila responden tidak memaklumkan kewujudan hak tersebut kepada pemohon. Dalam hal ini, saya berpendapat bahawa dokumen-dokumen tersebut penting dalam kes ini untuk menentukan samaada responden-responden telah menggunakan budi bicaranya dengan betul dalam mengendalikan presiding tatatertib dan telah mengambil kira kesemua material di hadapannya sebelum menjatuhkan hukuman kepada pemohon'.

[7] Dissatisfied with the decision of the learned judge, the appellants filed an appeal to the Court of Appeal.

[8] Before us, the learned senior federal counsel ('the SFC') for the appellants submitted that the documents are not relevant to the judicial review proceedings and that the case of *Ranhill Worley Sdn Bhd (formerly known as Jacobs Construction Management (M) Sdn Bhd) v Franz Jozef Marie Schefman & Anor* [2008] 6 MLJ 823, relied upon by the learned judge is distinguishable.

[9] Relying on, inter alia, *Yekambaran s/o Marimuthu v Malayawata Steel Bhd* [1993] MLJU 96, learned counsel for the respondent submitted that the documents that were ordered by the High Court met the criteria set-out in O 24 rr 3 and 7 of the ROC 2012.

[10] The alleged fact that this vehicle was a stolen vehicle, submitted learned counsel, formed the subject matter of the charges to which the respondent had unequivocally denied. It was the submission of learned counsel for the respondent that the appellants relied upon this fact in the decision making process. Thus it is necessary for him to have sight of the documents in order to advance his case in the judicial review application.

OUR DECISION

[11] The principles governing discovery in a judicial review application is clearly stated by this court in the case of *Rekapacific Bhd v Securities Commission & Anor and other appeals* [2005] 2 MLJ 269 as follows:

Parties seeking discovery and inspection of documents may experience more difficulty than in ordinary action, notwithstanding the incorporation of O 24 into judicial review proceedings.

Whereas in most actions discovery occurs automatically under O 24 rr 1 and 2 there is no inherent right, in applications for judicial review, to orders for discovery or inspection.

The retention of control by the court may indicate that such orders will be more difficult to obtain in cases under O 53. Certainly this was the view of the Court of Appeal in *R v Secretary of State for the Home Office, ex p Harrison* (unreported, 10 December 1987) where it was stated that on an application for judicial review discovery would be appropriate in fewer cases and was likely to be more circumscribed.

In general, the following principles appear to govern the grant or refusal of discovery under O 53:

(a) Discovery will not be ordered so as to make good defects in the applicant's evidence (*R v Inland Revenue Commissioners, ex p Taylor* [1981] COD 61; *R v Secretary of State for Education, ex p J* [1993] COD 146; *R v Inland Revenue Commissioners, ex p National Federation of Small Employed and Small Businesses Ltd* [1982] AC 617 at p 635H).

(b) One will seldom obtain full private law type discovery in a *Wednesbury* challenge, (*R v Secretary of State for the Environment, ex p Smith* [1988] COD 3).

(c) By contrast, discovery will be ordered under O 53 where it is required so that the justice of the case may be advanced and where it is necessary for disposing fairly of the matter, (within the meaning of O 24 r 8) (see *R v Inland Revenue Commissioners, ex p J Rothschild Holdings Plc* [1987] 1 STC 163; *R v Governor of Pentonville Prison, ex p Herbaga (No 2)* [1987] QB 1077).

(d) Discovery will also be ordered to go behind the contents of affidavits if there was some matter before the court which suggested that the contents of the affidavits were not accurate, (*Re H*, *The Guardian*, 17 May 1990). By contrast, discovery will not be ordered where there is no reason to doubt the bona fides or accuracy of the reasons given on affidavit (see *R v Secretary of State for the Environment, ex p Islington LBC* [1992] COD 67; *R v Secretary of State for Health, ex p LB of Hackney* [1994] COD 432).

The most authoritative pronouncement remains that of Lord Scarman in *Island Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617. In relation to discovery under O 53 he indicated that:

> ... Upon general principles, discovery should not be ordered unless and until the court is satisfied that the evidence reveals reasonable grounds for believing that there has been a breach of public duty; and it should be limited strictly to documents relevant to the issue which emerges from the affidavits.

The second limb of this statement is unexceptional. It is a guiding rule that discovery and inspection must be restricted to matters relevant to the existing dispute. Indeed, in judicial review proceedings it had been held that discovery must be central to the application (see *R v Secretary of State of the Home Department, ex p Benson* [1989] COD 329).

[12] In *Yekambaran s/o Marimuthu*, Edgar Joseph Jr J said:

... The essential elements for an order for discovery are threefold; namely, first, there must be a 'document', secondly, the document must be 'relevant' and thirdly, the document must be or have been in the 'possession, custody or power' of the party against whom the order for discovery is sought:

> It is indisputable, that the items of which discovery is sought are documents and that they are in the possession, custody or power of the defendant and nothing more need be said about this.

As to 'relevance', our Rules of the High Court limit discovery to documents which are 'relevant to' or 'relate' to the factual issues in dispute.

[13] We find that there is only one issue to be determined in this appeal, namely whether the respondent has satisfied that the documents sought for are relevant to the judicial review proceedings.

[14] Learned counsel for the respondent submitted that the documents are important to the respondent's case because the alleged fact that the vehicle was a stolen vehicle formed the subject matter of the charges. With respect, we are not able to agree with learned counsel. The disciplinary charges against the respondent were for soliciting the bribe money and for not making a report on the arrest of the complainant.

[15] The fact that the vehicle was a stolen vehicle was not the foundation of the charges. It was raised as a defence by the respondent. The respondent contended that he could not have committed the offence of soliciting the bribe when the vehicle was not reported stolen in the first place. In our view, whether or not the vehicle was a stolen vehicle would not affect the charges or the defence as it is not the respondent's case that he did not arrest the complainant on the ground the vehicle was not a stolen vehicle or that he did in fact make a report on the arrest of the complainant. The respondent's position all along was that the vehicle was never reported stolen. He wanted the documents to confirm that the vehicle was not stolen. We do not find any dispute on this fact. The appellants did not at any time aver that the vehicle was in fact stolen.

[16] We agree with the learned SFC that the case of *Ranhill Worley Sdn Bhd* is different on the facts. *Ranhill Worley* made reference to the case of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487. *Rohana bte*

Ariffin concerns the right for discovery of the documents in the disciplinary proceedings. In the instant case, the respondent did not request for the documents in the proceedings before the disciplinary board. The request was made after the disciplinary board had made its decision. There was thus no issue that the documents were crucial and necessary for the purpose of preparing the defence and representation. At the hearing before the disciplinary board, the respondent had put up his representation and he had alluded to the fact that he had made enquires where he was informed that there was no report of the said vehicle being stolen. The appellants could not be said to have breached the procedural fairness requirement. The reliance by the learned trial judge on the case of *Ranhill Worley* is with respect, misplaced.

[17] In any event, the judicial review application is not concerned with the correctness of a decision but rather with the manner the decision was made. Hence, the categories of documents which a court could consider were necessary to be discovered would be much more confined than if the litigation was related to the merits of the case.

[18] In *Carlow Kilkenny Radio Ltd v Broadcasting Commission of Ireland* [2003] 3 IR 528 at p 537, Geoghegan J said:

> ... discovery will not normally be regarded as necessary if the judicial review application is based on procedural impropriety as ordinarily that can be established without the benefit of discovery. Likewise, if the application for judicial review is on the basis that the decision being impugned was a wholly unreasonable one in the *Wednesbury* sense, discovery will again not normally be necessary because if the decision is clearly wrong it is not necessary to ascertain how it is arrived at. Where discovery will be necessary is where there is a clear factual dispute on the affidavits that would have to be resolved in order properly to adjudicate on the application or where there is prima facie evidence to the effect, either that a document which ought to have been before the deciding body was not before it or that a document which ought not to have been before the deciding body was before it.

[19] The other reason advanced by the respondent for the documents was because the documents were referred to in the appellants' affidavit in reply. This, in our view is not a valid ground for discovery as it was not the assertion of the respondent that there was a conflicting version in the affidavit in reply of the appellants such that the documents are necessary to resolve the conflict.

[20] To conclude, we find that the respondent has not met the requirements as stipulated in the cases of *Yekambaran s/o Marimuthu*; *Rekapacific Bhd* and *Carlow Kilkeny*. The respondent has failed to show the relevance of the documents for the purpose of the judicial review application. As mentioned above, he was given the opportunity to answer the charges and he was able to make his representation on the charges. Indeed it was not the contention of the

respondent that he was not able to properly prepare his representation or his defence to the charges. We therefore allow the appeal with costs in the cause.

Appeal allowed with costs in cause.

Reported by Afiq Mohamad Noor